IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14434 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI KESHVLAL PRAJAPATI EX CHARIMAN OF AMBALIASAN

Versus

REGIONAL PROVIDENT FUND COMMISIONER

Appearance:

1. Special Civil Application No. 14434 of 2003

MR BHARAT T RAO for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1-2

RULE SERVED for Respondent No. 1,3-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/09/2004

ORAL JUDGEMENT

1. In the present petition, the petitioner has

challenged the impugned order dated 28th February, 2003 passed by the Assistant Commissioner of Provident Fund in exercise of powers under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act and prayed for a direction that fresh inquiry may be conducted and after giving reasonable opportunity to the petitioner, fresh orders may be ordered to be passed. The petitioner has also prayed for quashing and setting aside of the arrest warrant dated 24th September, 2003.

2. It is the case of the petitioner that the petitioner was the Chairman of one Ambalias Majoor Sahakari Mandali Limited. The said Mandali was allotted P.F. Code Number also, and accordingly, the petitioner was depositing the Provident Fund dues regularly. It is the case of the petitioner that the respondents had passed an ex parte order dated 28th February, 2003 by which the respondents raised a demand of Rs.16,05,535/-from the petitioner towards Provident Fund dues. The petitioner has in the petition stated that the said order was illegal, and that the petitioner is not required to pay any amount towards Provident Fund dues. The petitioner has also stated that though notice of the proceedings was served at the residence of the petitioner, and it cannot be disputed as found from the order itself that the proceedings were adjourned from time to time, the petitioner could not participate in the inquiry proceedings under Section 7-A of the said Act conducted by the respondents for valid reasons. It is further stated by the petitioner that he had not received the said order dated 28th February,2003, but on coming to know about the same, the petitioner visited the Office of the Provident Fund Commissioner on 24th September, 2003 and on the very same day, he was arrested and sent to Sabarmati Central Jail, Ahmedabad. The petitioner, therefore, filed the present petition on 3rd October, 2003 and sought the setting aside of the impugned order dated 28th February, 2003 as well as the arrest warrant dated 24th September, 2003.

3. During the pendency of the petition, this Court by order dated 9th October, 2003, ordered that the petitioner be released from civil prison upon the petitioner depositing an amount of Rs.5 Lakhs against the demand pursuant to order dated 28th February, 2003. It is not in dispute that the petitioner was released from custody after depositing the said amount. The learned Advocate for the petitioner Shri B.T.Rao has stated that over and above the said amount of Rs.5 Lakhs deposited by the petitioner with the respondents towards the demand raised through order dated 25th February, 2003, the ONGC

has also further deducted from the petitioner's entitlement, and deposited with the respondents a further amount of Rs.4 Lakhs, which amount is towards principal liability of Rs.1,78,897/- plus the interest thereon. The learned Counsel for the respondents states that he has no instructions in this regard. He, however, agrees that if the said amount of Rs.4 Lakhs is already deposited as stated, and if the same is towards the demand raised through order dated 28th February, 2003, the petitioner should get credit for the same.

4. Having considered the averments made in the petition and the situation arising from the developments leading to petition and during the pendency thereof, I am of the view, that the petitioner having already deposited with the respondents substantial amounts towards demand raised by the respondents pursuant to order dated 28th February, 2003, the petitioner is required to be given an opportunity to appear before the Assistant Provident Fund Commissioner and represent his case. For the said purpose, the matter is required to be remanded to the Assistant Provident Fund Commissioner for fresh hearing after giving an opportunity to the petitioner to represent his case. The impugned order dated 28th February, 2003 is, therefore, set aside, and the matter is remanded back to the competent authority under the Employees Provident Fund and Miscellaneous Provisions Act for passing fresh orders in accordance with law after hearing the petitioner. The petitioner is directed to cooperate with the fresh proceedings. In view of the setting aside of the order dated 28th February, 2003, the arrest warrant dated 24th September also does not survive. The amount deposited by the petitioner pursuant to the order of this Court will be subject to the final order that may be passed by the authority and will be adjusted in terms thereof.

5. In the result, the petition succeeds partially. Rule is made absolute to the above extent with no orders as to costs.

(Akil Kureshi,J.)

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